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C O N F I D E N T I A L SECTION 01 OF 02 NEW DELHI 000870

SIPDIS

STATE FOR U/S BURNS, OSD FOR U/S FLOURNOY, DSCA FOR ADM.  
WIERINGA

E.O. 12958: DECL: 05/01/2019

TAGS: [PREL](#) [MASS](#) [IN](#)

SUBJECT: END USE MONITORING: FINDING AN ACCEPTABLE TEXT

REF: A. NEW DELHI 438

[1](#)B. 08 NEW DELHI 3265

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Classified By: Charge d'Affaires Peter Burleigh. Reasons: 1.4 (B and D  
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[1](#)1. (U) This is an action request. See para 7.

[1](#)2. (C) During the last several weeks, GOI officials have indicated a stronger interest in settling outstanding issues involving End Use Monitoring (EUM) language to be used in Letters of Agreement for defense sales. We see an opportunity to discuss an acceptable text in a follow-on meeting after the May 11-12 Senior Technology Security Group meeting in Washington. The goal would be to tee up a text that the GOI could review and approve immediately following the formation of a new Indian government in late-May/early June.

New Indian Push for a Solution  
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[1](#)3. (SBU) Following Under Secretary Flournoy's March 27 letter to Indian Foreign Secretary Menon inviting a GOI proposal to resolve this long-standing issue, Ministry of Defense Joint Secretary Nagaraj contacted ODC to discuss specific USG objections to the Indian EUM text of February [1](#)12. In an April 2 letter, Nagaraj attempted to clarify outstanding issues. Specifically, she asked for confirmation that the USG's chief concern was to ensure the GOI made available transferred defense articles in addition to inventory and accountability records to allow for joint security verification. She asked the USG to confirm that (EEUM aside) such joint security verification would be required "only" in the event of the USG receiving credible reports of unauthorized use. Finally, she asked whether language in the February 12 Indian draft text regarding verification of unauthorized use was acceptable if such verification included the U.S. requirement of access to the defense articles themselves.

[1](#)4. (C) In late April, we heard from a credible source that Foreign Minister Mukherjee, angered at the constant cost overruns and delays associated with the purchase from the Russians of the Admiral Gorshkov aircraft carrier, had instructed Foreign Secretary Menon to resolve the EUM issue as soon as a new Indian government was in place. (See Ref. A on India and the Admiral Gorshkov purchase). In an April 29 meeting, MEA Americas Joint Secretary Gaitri Kumar underlined the GOI's interest in resolving this issue expeditiously.

What Are the Issues for the Indians?

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15. (SBU) There appear to be two key GOI concerns with EUM. First and foremost, the GOI has been unwilling to guarantee access to transferred defense articles. Instead, GOI drafts have provided for "joint consultations for joint security verification of the transferred defense articles and related security and custody procedures." Earlier Indian drafts discussed access only to records and inventory. GOI wariness about access to defense articles was couched in concerns that the U.S. would insist on access to defense articles at sensitive military installations such as the Siachen glacier, which is not accessible to non-Indian military forces. The April 2, 2009 letter from MOD Joint Secretary Nagaraj indicates for the first time a potential willingness to provide access to transferred defense articles in cases where the USG proposes to verify "credible reports that such articles have been used for other than authorized purposes."

16. (SBU) Secondly, the GOI objects to limiting the use of transferred defense articles to: "(a) internal security, civic action, legitimate self defense, preventing the proliferation of weapons of mass destruction, and of the means of delivering such weapons, or (b) other operations of the Armed Forces of India as jointly agreed to in writing by the U.S. Government and the Government of India." GOI officials from time to time have raised questions about whether the use of equipment in cases like "OPERATION CACTUS," the 1988 GOI intervention to disrupt a coup in the Maldives, would be allowed under the U.S. text. The GOI has opposed the specific list of possible uses out of concern that actual use by GOI military forces would fall outside one of the definitions of acceptable use. At the same time, Foreign Secretary Menon has acknowledged that a broad

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interpretation of "self defense" could reduce the practical effect of this requirement. (Ref. B). One potential resolution could be to use text from the bilateral 1951 Mutual Defense Assistance Agreement that allows for the "Government of India to maintain its internal security, its legitimate self-defense or permit it to participate in the defense of the area of which it is a part."

Next Steps  
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17. (SBU) Joint Secretary Nagaraj will be attending the May 11-12 Senior Technology Security Group meeting in Washington and has indicated a willingness to stay on for informal EUM discussions. While she would not be empowered to agree to a text (such a text would have to be approved by the Cabinet Committee on Security), we recommend that an invitation for an informal discussion on EUM text be extended. The goal would be to produce an ad ref text that could be approved by the new government.

BURLEIGH